

REMARKS

Claims 17-19, 27, and 48-53 are pending in the application. The independent claims stand rejected under §102(e) and/or §103 as being unpatentable over Lambrecht et al. (2002/151979). For the reasons set forth below, favorable reconsideration of the application is respectfully requested.

1. Interview Summary

On December 5, 2007, applicant's attorney Thomas conducted a telephonic interview with Examiner Pellegrino to discuss the patentability of independent claim 27. Applicant's attorney contended that the pending Office Action is wrong for stating that Lambrecht discloses using a drawstring to fold an implant in a disc nucleus space. Instead, Lambrecht discloses using a "control filament" to move an implant in a disc space, but not to fold the implant.

Applicant's attorney pointed out that Lambrecht's Figures 49A-F, 50A-E, and 51A-C illustrate the point. Those drawings show that to the extent the Lambrecht implant is "folded" at all, it is "folded" by the act of implanting it in the disc nucleus space. The Lambrecht control filament is used to straighten the implant, and not to fold it.

Applicant's attorney also pointed out that paragraphs 207-208 and 213-215 of the Lambrecht reference support applicant's position. Those paragraphs describe how the Lambrecht control filament is used to move the Lambrecht implant to a position blocking the inner aspect of the annulotomy:

[207] . . . Once the implant 400 is completely outside of the delivery cannula 402 and within the disc 15, the implant 400 can be pulled into the desired implant location by pulling on the control filament 406 as shown in FIG. 49C. . . .

[0208] Pulling on the control filament 406 causes the implant 400 to move toward the annulotomy 416. The distal end 410 of the delivery cannula 402 can be used to direct the proximal end 420 of the implant 400 (that portion of the implant 400 that is last to be expelled from the delivery cannula 402) away from the annulotomy 416 and toward an inner aspect of the anulus 10 nearest the desired implant location. Alternately, the advancer 404 can be used to position the proximal end of the implant toward an inner aspect of the anulus 20 near the implant location, as shown in FIG. 49E. Further pulling on the control filament 406 causes the proximal end 426 of the implant 400 to dissect along the inner aspect of the anulus 20 until the attachment site 414 or sites of the guide filament 406 to the implant 400 has been pulled to the inner aspect of the annulotomy 416, as shown in FIG. 49D. In this way, the implant 400 will extend at least from the annulotomy 416 and along the inner aspect of the anulus 10 in the desired implant location, illustrated in FIG. 49F.

\* \* \*

[0214] Multiple guide filaments can be secured to the implant 400 at various locations. . . . This double guide filament system allows the implant 400 to be positioned in the same manner described above in the single filament technique, and illustrated in FIGS. 50A-C. However, following completion of this first technique, the user may advance the proximal end 420 of the device 400 across the annulotomy 416 by pulling on the second guide filament 424, shown in FIG. 50D. This allows the user to controllably cover the annulotomy 416. . . .

[0215] Both the first 422 and second 424 guide filaments can be simultaneously tensioned, as shown in FIG. 50E, to ensure proper positioning of the implant 400 within the anulus 10. Once the implant 400 is placed across the annulotomy, the first 422 and second 424 guide filaments can be removed from the input 400, as shown in FIG. 50F. . . .

As shown by the above quotations from the Lambrecht disclosure, Lambrecht teaches away from applicant's claimed method by teaching that the control filament should be used to straighten the implant rather than to fold it.

Applicant's attorney concluded the interview by reminding the Examiner that the pending claims require that a drawstring (or control filament) be used to fold an implant in a disc nucleus space. Since Lambrecht discloses using a control filament to move an implant in a disc nucleus space, but not to fold it, applicant's claims are believed to be patentable over the Lambrecht reference.

It is believed that agreement was reached that Lambrecht does not teach or suggest using a drawstring or control filament to fold an implant in an intervertebral disc nucleus space.

## 2. Response to Pending Office Action

For the reasons stated during the interview, it is believed that the pending method claims are patentable over the cited references. Favorable consideration of the amended application is respectfully requested.

Respectfully submitted,

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